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From:

Sent: Wednesday, May 08, 2013 6:33 PM

To:

Cc:

Subject: RE: Quick question – Effect of Bkty Petition Assmt SOL

Hi - - I agree that the filing of a bankruptcy petition doesn't suspend the assessment SOL if a notice of deficiency hasn't been issued. BC 362(b)(9)(D) provides that the automatic stay doesn't prohibit the making of a tax assessment, and section 362(b)(9)(B) provides that the stay doesn't prohibit the issuance of a notice of deficiency. Once an SN is issued, however, the IRS is indirectly prohibited by the stay from assessing a deficiency during the time the debtor is prohibited by section 362(a)(8) from filing a Tax Court petition. (*Note:* Prior to the Bankruptcy Act of 1994, the IRS was directly prohibited by the automatic stay from making assessments. Because the BC now allows assessments, the SOL on assessments is no longer suspended by reason of a bankruptcy case pursuant to IRC 6503(h)(1).)

Section 362(a)(8) prevents an individual debtor from filing a petition in Tax Court concerning a prepetition tax while the stay is in effect. When this happens, IRC 6213(f)(1) suspends the running of the 90-day period to petition Tax Court while the stay is in effect, plus 60 days. When a statutory notice is issued while the stay is in effect, the taxpayer has 150 days to file a petition in Tax Court after the stay ends. Because the IRS is prohibited by IRC 6213(a) from assessing a deficiency during the time the taxpayer has to petition Tax Court, the filing of a bankruptcy petition has the effect of *indirectly* preventing the IRS from making an assessment. IRC 6503(a)(1) suspends the running of the SOL on assessment during the time the IRS is prohibited from making an assessment, and for 60 days thereafter.

This issue is discussed in the Chief Counsel Bankruptcy Practice Deskbook on pp. 2-21 to 2-22.

I hope this answers your question. Feel free to contact me, however, should you have any questions regarding the above.